

ADMINISTRATIVE PANEL DECISION

Amazon.com, Inc. v. 陈东 (chen dong), 佛山市盛世长富新型装饰材料有限公司 (fo shan shi cheng shi chang fu xin xing zhuang shi cai liao you)

Case No. D2023-1064

1. The Parties

The Complainant is Amazon.com, Inc., United States of America (“United States”), represented by ZeroFox, United States.

The Respondent is 陈东 (chen dong), 佛山市盛世长富新型装饰材料有限公司 (fo shan shi cheng shi chang fu xin xing zhuang shi cai liao you), China.

2. The Domain Name and Registrar

The disputed domain name <customerservice-amazon.com> is registered with Xin Net Technology Corp. (北京新网数码信息技术有限公司) (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on March 8, 2023. On March 10, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 13, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (“Redacted for Privacy”) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 17, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. On March 17, 2023, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On March 17, 2023, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding. The Complainant filed an amendment to the Complaint in English on March 24, 2023.

The Center verified that the Complaint together with the amendment to the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent in English and Chinese of the Complaint, and the proceedings commenced on March 27, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 16, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 17, 2023.

The Center appointed Matthew Kennedy as the sole panelist in this matter on May 10, 2023. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant was founded in 1994 as an online marketplace for books and has since expanded its offering of goods and services. It uses the domain name <amazon.com> in connection with an online marketplace that grosses 2 billion views per month. The Complainant, through its affiliated company Amazon Technologies, Inc., has rights in United States trademark registration number 2167345 for AMAZON.COM, registered on June 23, 1998, specifying services in class 35. That trademark registration remains current.

The Respondent is an individual and a company based in China. The company name may be translated as "Foshan Shengshi Changfu New Decoration Material Co., Ltd."

The disputed domain name was registered on June 1, 2021. It does not resolve to any active website; rather, it is passively held.

5. Parties' Contentions

A. Complainant

The disputed domain name is confusingly similar to the Complainant's AMAZON.COM mark.

The Respondent has no right or legitimate interest in respect of the disputed domain name. The Respondent has made no attempt to use the disputed domain name for a *bona fide* offering of goods or services in the two years in which the domain has been registered. In lieu of any preparation to be used in commerce or for a noncommercial purpose, the disputed domain name simply does not resolve and has had no work put into it beyond its registration. The disputed domain name indicates an attempt to trick consumers into believing this website serves a customer service role. The addition of "customerservice-" suggests a direct relationship to or a service offered by the Complainant, of which there is no evidence provided. The Respondent has no claim to a fair use purpose such as commentary or criticism.

The disputed domain name was registered and is being used in bad faith. There is overwhelming reason to believe that the disputed domain name was registered in bad faith, with an express purpose to confuse consumers into believing that it is affiliated with the Complainant's customer support service. The Respondent registered the disputed domain name with confusing similarity to one of the world's largest online retailer in a country (China) in which it has a major household presence. The Respondent has no other plausible use for the disputed domain name other than to use it to disrupt business, sell the disputed domain name for a profit or send emails with the active mail exchange ("MX") record in order to mislead consumers who believe they are affiliated with the Complainant. The Respondent has made no information of itself available.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

6.1. Procedural Issue: Language of the Proceeding

Paragraph 11(a) of the Rules provides that “unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding”. The Registrar confirmed that the Registration Agreement for the disputed domain name is in Chinese.

The Complainant requests that the language of the proceeding be English. Its main arguments are that the disputed domain name is written using Latin characters and distinctly uses the English language; and the Complainant is headquartered in the United States.

Paragraphs 10(b) and (c) of the Rules require the Panel to ensure that the Parties are treated with equality, that each Party is given a fair opportunity to present its case and that the administrative proceeding take place with due expedition. Prior UDRP panels have decided that the choice of language of the proceeding should not create an undue burden for the parties. See, for example, *Solvay S.A. v. Hyun-Jun Shin*, WIPO Case No. [D2006-0593](#); and *Whirlpool Corporation, Whirlpool Properties, Inc. v. Hui'erpu (HK) electrical appliance co. Ltd.*, WIPO Case No. [D2008-0293](#).

The Panel observes that the Complaint and the amendment to the Complaint were filed in English. The disputed domain name also contains English words, which indicates that the Respondent is able to understand that language. Despite the Center having sent an email regarding the language of the proceeding and the Notification of the Complaint in English and Chinese, the Respondent has not commented on the language of the proceeding or indicated any interest in participating otherwise in this proceeding. Therefore, the Panel considers that requiring the Complainant to translate the Complaint would create an undue burden and delay.

Having considered all the circumstances above, the Panel determines under paragraph 11(a) of the Rules that the language of this proceeding is English. The Panel would have accepted a Response in Chinese, but none was filed.

6.2 Substantive Issues

Paragraph 4(a) of the Policy provides that a complainant must prove each of the following elements:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- (ii) the respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

The burden of proof of each element is borne by the Complainant. The Respondent's default does not by itself mean that the Complainant is deemed to have prevailed. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 4.3.

A. Identical or Confusingly Similar

Based on the evidence presented, the Panel finds that the Complainant, through its affiliated company, has rights in the AMAZON.COM mark.

The disputed domain name wholly incorporates the AMAZON.COM mark, preceded by the words “customer service” separated from the mark by a hyphen. The addition of these words and this punctuation does not

prevent a finding of confusing similarity because the mark remains clearly recognizable within the disputed domain name. See [WIPO Overview 3.0](#), section 1.8.

Therefore, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights. The Complainant has satisfied the first element in paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out the following circumstances which, without limitation, if found by the Panel, shall demonstrate that the respondent has rights or legitimate interests in a disputed domain name, for the purposes of paragraph 4(a)(ii) of the Policy:

- (i) before any notice to [the respondent] of the dispute, [the respondent's] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a *bona fide* offering of goods or services; or
- (ii) [the respondent] (as an individual, business, or other organization) [has] been commonly known by the [disputed] domain name, even if [the respondent has] acquired no trademark or service mark rights; or
- (iii) [the respondent is] making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

As regards to the first and third circumstances set out above, the disputed domain name wholly incorporates the Complainant's mark, preceded by the words "customer service", which creates a risk of implied affiliation with the Complainant. It is clear from the Complaint that the Respondent is not authorized by the Complainant to use its mark in a domain name or otherwise. The disputed domain name is passively held. This is not a use in connection with a *bona fide* offering of goods or services and there is no evidence of any demonstrable preparations to make such a use of the disputed domain name. Nor is this a legitimate noncommercial or fair use of the disputed domain name.

According to the Registrar's Whois database, the Respondent's name is "陈东 (chen dong), 佛山市盛世长富新型装饰材料有限公司 (fo shan shi cheng shi chang fu xin xing zhuang shi cai liao you)", which may be translated as "Foshan Shengshi Changfu New Decoration Material Co., Ltd", none of which resembles the disputed domain name. There is no evidence on the record that the Respondent has been commonly known as the disputed domain name.

In view of the above circumstances, the Panel considers that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent did not rebut that case because it did not respond to the Complainant's contentions.

Therefore, based on the record of this proceeding, the Panel finds that the Complainant has satisfied the second element in paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that certain circumstances shall be evidence of the registration and use of a domain name in bad faith but these circumstances are not exhaustive.

With respect to registration, the disputed domain name was registered in 2021, years after the registration of the Complainant's AMAZON.COM mark. The mark as a whole is not a dictionary word or common phrase but is arbitrary with respect to the Complainant's goods and services. Despite this, the disputed domain name incorporates the mark exactly, preceded by the words "customer service". The Respondent offers no explanation for his choice to register the disputed domain name. Based on this record, the Panel finds that the Respondent had the Complainant and its mark in mind at the time that he registered the disputed domain name.

With respect to use, the Respondent currently makes only passive use of the disputed domain name but this does not preclude a finding of use in bad faith. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#). In the present dispute, the Complainant has acquired an important reputation in its AMAZON.COM mark through long-standing and widespread use in connection with its online marketplace. The disputed domain name wholly incorporates the Complainant's mark preceded by the words "customer service", which give the false impression that it will be used to provide customer service in relation to the Complainant's online marketplace. The Respondent provides no explanation of any good faith use of the disputed domain name that it contemplates. In all these circumstances, the Panel considers it is more likely than not that the Respondent is using the disputed domain name in bad faith.

Therefore, the Panel finds that the disputed domain name has been registered and is being used in bad faith. The Complainant has satisfied the third element in paragraph 4(a) of the Policy.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <customerservice-amazon.com> be transferred to the Complainant.

/Matthew Kennedy/
Matthew Kennedy
Sole Panelist
Date: May 19, 2023